IN THE SUPREME COURT OF THE UNITED STATES

FALL TERM 1966

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JOHN F. DAVIS, CLERK

CHARLES RONALD GRAY, PETITIONER

VS

THE STATE OF NORTH CAROLINA, RESPONDENT

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT

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VS

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT

LeRoy Scott, on behalf of Charles Ronald Gray, petitioner, prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of North Carolina entered in the case of State of North Carolina vs Charles Ronald Gray on the 21st day of September, 1966.

OPINIONS BELOW

The opinion of the Supreme Court of the State of North Carolina is reported in 268 NC 69, 150 SE2d 1 (1966).

JURISDICTION

The jurisdiction of this Court is invoked under 28 USCA 1257 (3) (June 25, 1948, C.646, 62 Stat 929)

QUESTIONS PRESENTED

The questions presented are:

1. Does the holding in the case of Miranda v Arizona, 86 SCT. 1602 that: "Prior to any questioning, the person must be warned that he has the right to remain silent, that any statement he does make may be used against him, and that he has a right to the presence of an attorney, either retained or appointed" establish the constitutional rights of all prisoners in the United States regardless of the station they occupy in life or does it differentiate between the constitutional rights of the rich and the constitutional rights of the poor?

2. Is the following finding of facts by a trial judge in a State Court adequate to protect the constitutional rights of a prisoner when considered with the necessary requirements as announced in the Miranda decision: "The Court finds that the defendant was advised at the time of his arrest or immediately thereafter that he had a right to have and confer with counsel. That he had a right to remain silent or to make a statement and that any statement he made would be used against him."

3. Has a defendant who is arrested on a felony charge, carried before a Justice of the Peace for a probable cause hearing within an hour after arrest and bound over to Superior Court without being advised of his rights in accordance with the Miranda decision been afforded adequate protection of the procedural safeguards of his constitutional rights as announced by the United States Supreme Court?

4. Does the United States Supreme Court decision in Miranda v Arizona vest in the arresting officer the discretionary authority to determine what prisoners are indigent and what prisoners are able to afford counsel and which prisoners will be advised of some constitutional rights and which prisoners will not be advised as to certain constitutional rights?

STATEMENT

Charles Ronald Gray was tried in Martin County in a criminal prosecution on an indictment for feloinious breaking and entering and larceny, which indictment charged in substance that Charles Ronald Gray on or about the 27th day of July, 1965 broke and entered an old abandoned house owned by T. W. Weaver with the intent to steal merchandise belonging to the said Weaver and took and carried away various items of insignigicant personal property of an alleged value of $50.00. The Bill of Indictment was returned by the Grand Jury at the September-October 1965 Term of the Superior Court of Martin County. The defendant along with a co-defendant, Vann Gray, was arraigned and entered a plea of guilty after signing a waiver of counsel. Upon the plea of guilty the defendant, Charles Ronald Gray, was sentenced to the State's Prison for an active term of not less than four nor more than seven years with a recommendation that the defendant, Charles Ronald Gray, be given a complete

psychiatric examination. The co-defendant, Vann Gray, was given a suspended sentence and placed on probation. Commitment of Charles Ronald Gray was issued and the defendant began serving the sentence in the State's Prison. Charles Ronald Gray was at that time 18 years of age and was a Freshman at East Carolina College in Greenville, North Carolina.

On December 14, 1965 the defendant, Charles Ronald Gray, filed a petition for a review of his case. Answer was duly filed by the State. Hearing was held on the petition before the Honorable Walter Cahoon in Plymouth, North Carolina on the 19th day of January, 1966. Judge Cahoon found that the defendant did not have fully and adequately explained to him the various phases of the charges against him and possible alternative charges nor the full consequences of what might be expected as a result of his said plea of guilty and that he did not fully understand his plea of guilty. Judge Cahoon ordered a new trial. The State petitioned this court for certiorari which was denied.

Charles Ronald Gray was retried at the June 13, 1966 Term of Martin County Superior Court.

The defendant was arrested by Deputy Sheriff Jerry Beach at the home of T. A. Weaver's sister at Gold Point in Martin County at 7:20 P. M., August 4, 1965 (Rp 33). Within a matter of a few minutes after his arrest, less than an hour (Rp 92), he was taken before Justice of the Peace D. A. Roberson for a preliminary hearing at the Robersonville Police Station. Justice of the Peace Roberson found probable cause and bound the defendant over to the Superior Court and bond was set at $200.00. The defendant was not represented by counsel at any time during this proceeding and during police interrogation. At the time the defendant was arrested at approximately 7:20 P. M. by Deputy Sheriff Jerry Beach, he was advised that he had a right to remain silent (Rp 36); that anything he said might be used against him in a court of law (Rp 36); and that he could employ counsel (Rp 36 emphasis added). After this advice by the arresting officer the defendant allegedly made a confession to the arresting officer. The defendant did not ask for any attorney to be obtained for him and he did not ask at any time to be allowed to make a phone call to any attorney (Rp 36).

The evidence of the confession allegedly made to Deputy

Sheriff Jerry Beach was admitted by the Trial Judge over objection of the defendant and the trial Judge made certain findings of fact as to the confession (Rp 50 & 51). The defendant was also interrogated by Mike Roberson of the Robersonville Police who at no time advised the defendant of any rights and to whom the defendant also allegedly made incriminating statements (Rp 88, 89 & 90). The Court also made certain findings of fact as to the confession by the defendant allegedly made to Mike Roberson and over objection of the defendant allowed Mike Roberson to testify in relation to the confession.(Rp 90 & 91)

The defendant was convicted by a jury and sentenced to the State's Prison for a period of not less than four nor more than six years on each count with the sentence in the second count to run concurrently with the sentence in the first count. The defendant gave notice of appeal and appeal was taken to the Supreme Court of the State of North Carolina. In the opinion by the North Carolina Supreme Court, 268 NC 69, 150 SE2d 1 (1966) by Lake, J., the Court held as follows beginning on Page 10 of the Southeastern Reporter:

"We are, therefore, brought to this question: Did the Supreme Court of the United States in the Miranda case hold that as a matter of law, irrespective of a defendant's actual ability to employ counsel, no statement made by him to an officer, while in the custody of the officer and in response to a question by the officer, may be introduced in evidence against the defendant unless it affirmatively appears that the officer first told the defendant that if he was an indigent person counsel would be appointed to represent him?

We do not so interpret the decision in the Miranda case. It clearly appears from that opinion of the Supreme Court of the United States that the admissibility of evidence of a confession, made in response to police interrogation while the defendant is in custody, depends upon the sufficiency of the record to demostrate 'the use of procedural safeguards effective to secure the privilege against self-incrimination.' The Court 'spelled out' procedural safeguards which must be employed 'unless other fully effective means are devised to inform accused persons of their right of silence and to assure a continuous opportunity to exercise it.' "

The Court further held on Page 11 of the Southeastern Reporter as follows:

"We hold that the admission of this defendant's alleged statements to the officers does not violate his right under the Due Process Clause of the Fourteenth Amendment, as interpreted by the United States Supreme Court in the Miranda case, because there is nothing in the record to show, and it has not been contended by the defendant, either in the trial court or before us, that this defendant was an indigent entitled to have counsel appointed for him at the time of his arrest and conversations with the officers. It cannot violate this defendant's constitutional right against self-incrimination for the officers in their interrogation to fail to advise him of rights which some other person might have but which he does not have in view of his own circumstances."

REASONS FOR GRANTING THE WRIT

The decision below should be reviewed because it erroneously interprets the rules for procedural safeguards for in custody interrogation of prisoners as laid down by the United States Supreme Court in the Miranda decision in a manner so as to disrupt the orderly and uniform handling of prisoners throughout the United States.

The United States Supreme Court has made the requirements absolute that law enforcement officers must follow four rules in order to satisfy the essential requirements for the admissibility of evidence of confessions elicited from accused persons during police interrogation after arrest. The first requirement is the right to remain silent.

"At the outset, if a person in custody is to be subjected to interrogation, he must first be informed in clear and unequivocal terms that he has the right to remain silent. For those unaware of the privilege, the warning is needed simply to make them aware of it - the threshold requirement for an intelligent decision as to its exercise. More important, such a warning is an absolute prerequisite in overcoming the inherent pressures of the interrogation atmosphere. It is not just the subnormal or woefully ignorant who succumb to an interrogator's imprecations, whether implied or expressly stated, that the interrogation will

continue until a confession is obtained or that silence in the face of accusation is itself damming and will bode ill when presented to a jury." Miranda v Arizona, 86 Sct 1602.

The second requirement is the effect of making a statement.

"The warning of the right to remain silent must be accompanied by the explanation that anything said can and will be used against the individual in court. This warning is needed in order to make him aware not only of the privilege, but also of the consequences of foregoing it. It is only though an awareness of these consequences that there can be any assurance of realy understanding and intelligent exercise of the privilege." Miranda, supra.

The third requirement is the right to an attorney.

"Accordingly we hold that an individual held for interrogation must be clearly informed that he has the right to consult with a lawyer and to have the lawyer with him during interrogation under the system for protecting the privilege we delienate today. As with the warnings of the right to remain silent and that anything stated can be used in evidence against him, this warning is an absolute prerequisite to interrogation." Miranda, supra.

The fourth requirement is the right to an appointed attorney.

"In order fully to apprise a person interrogated of the extent of his rights under this system then, it is necessary to warn him not only that he has the right to consult with an attorney, but also that if he is indigent a lawyer will be appointed to represent him. Without this additional warning, the admonition of the right to consult with a lawyer if he has one or has the funds to obtain one. The warning of a right to counsel would be hollow if not couched in terms that would convey to the indigent - the knowledge that he too has a right to have counsel present." Miranda, supra.

There can be no question as to the application of the rules as announced by the Supreme Court of the United States in the Miranda case to the case of Charles Ronald Gray now before this Court for review. The Miranda case was decided June 13, 1966. Charles Ronald Gray was tried at the term of Superior Court in Martin County commencing on June 13, 1966. The actual trial of the case commenced on Wednesday

morning, June 15, 1966 and the jury returned its verdict on June 16, 1966.

During the direct examination of Deputy Sheriff Jerry V. Beach who made the arrest of the defendant, he testified as follows: "I advised him he had a right to remain silent. I advised him anything he said might be used against him in a Court of law. I advised him he could employ counsel. (emphasis added). After advising him of these rights of his he then made a statement to me. He did not ask for any attorney to be obtained for him. He did not ask at any time to be allowed to make a phone call to any attorney." It is noted that at no time was the defendant advised that he could have an attorney appointed for him by the Court and also it is noted that there was no inquiry made into the defendant's financial status or his ability to employ counsel on his own. On the voir dire by the Court Deputy Sheriff Beach was asked the following question: "Did you then tell him he was entitled to have counsel if he desired counsel?" Answer: "Yes, I sure did." (See Rp 40) In answer to another question Deputy Sheriff Beach gave the following answer: "If I may say this, Sheriff Rawls had a conference with us and on occasions he still does concerning this particular thing, be sure and advise them of their rights and to get an attorney, what they say will be held against them, etc. and I was trying to do the best I knew how and doing what I was taught to do." (Rp 41) With further questions from the Court (Rp 41 & 42) Deputy Sheriff Beach gave the following answers: Question: "Well, you are not under attack. Just tell us what did take place? Tell us what you think you said to him and what his response was?" Answer: Well, first of all I put him under arrest." Question: "You told him he was under arrest for breaking and entering and larceny at the Weaver home?" Answer: "Yes, I did. Also I told him anything he said would be held against him, if he wanted time to get a lawyer before we proceeded he could have that."

At the end of the examination on the voir dire the Court found as follows: (Rp 50 & 51)

"The Court finds that the defendant was advised at the time of his arrest or immediately thereafter that he had a right to have and confer with counsel. That he had a right to remain silent or to make a statement and that any statement he made might be used against him. The Court being of the opinion

that the defendant fully understood his rights, finds that any statement that the defendant made at the time or immediately thereafter to Deputy Sheriff Beach was freely, voluntarily and understandingly made, without any promise of reward, duress or other pressure."

These findings of fact by the Court are totally inadequate under the Miranda case because the four rules laid down in the Miranda case are set out conmunctively rather than in the alternative and each of the four requirements must be present or the essential requirements are not met. It is conceded by the defendant that he was advised that he had a right to remain silent, the effect of making a statement and of his right to an attorney. These three requirements are met and they appear both in the testimony of the arresting officer and in the Court's finding of fact. However, the record is completely silent as to the fourth essential requirement, that of advising the defendant that he had a right to an appointed attorney. The record is also silent as to whether or not any inquiry was made by the arresting and interrogating officer as to the financial status of the defendant and his ability to hire an attorney and at no time was he advised that if he could not afford an attorney that one would be appointed for him. These four essential requirements are what the Court has announced to be necessary to safeguard the defendant's constitutional rights and it is obvious from this record that the essential requirements have not been met.

In the testimony of Mike Roberson on the voir dire who also participated in the interrogation of the defendant after the arrest (Rpp 88, 89, 90, 91) he testified that he did not know whether or not the defendant had been warned by Deputy Sheriff Beach about his rights or advised about his rights to have counsel. On record Page 90 the Court announced further findings o fact.

"The Court finds that at the time he made a statement to Sgt. Roberson and Deputy Sheriff Beach the defendant had been advised of his rights to have counsel, advised that any statements he made might be used against him and that he understood his rights."

These findings of fact by the trial Judge are inadequate and do not meet the test as laid down by the United States Supreme Court for the admissibility of evidence as to confessions or statements alleged to have been made in the

presence of Deputy Sheriff Beach and Mike Roberson.

Mike Roberson further testified on cross examination that he knew the defendant didn't have a lawyer, that he didn't know whether or not the defendant had any money to hire one, that he didn't know the defendant's financial status. (Rp 92) He further testified (Rp 93) that he did not tell him he had a right to hire a lawyer. He even testified he was not sure whether or not he told him anything he might say could be used against him. (Rp 93)

The rules for the admissibility of evidence as to alleged confessions obtained during police interrogation have been plainly set out by the United States Supreme Court. These rules must be complied with in order to protect the constitutional rights of this defendant, Charles Ronald Gray. It makes no difference that the Miranda case was decided on Monday, June 13th and this defendant was tried on Wednesday, June 16th for with the decision in the Miranda case came the law which should have applied in the case of State vs Charles Ronald Gray. Neither does the fact that the learned trial Judge may not have had an oppportunity to read the Miranda decision excuse prejudicial error where the constitutional rights of a defendant are concerned. It is here urged that this Court grant Certiorari for the purpose of correcting the erroneous interpretation of the rules for in custody interrogation of prisoners made by Lake, J., in the North Carolina Supreme Court.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that this petition for a writ of certiorari should be granted.

This the 15th day of December, 1966.

LEROY SCOTT
ATTORNEY AT LAW
WASHINGTON, NORTH CAROLINA
ATTORNEY FOR THE PETITIONER,
CHARLES RONALD GRAY

PROOF OF SERVICE

I, LeRoy Scott, Attorney at Law, Washington, North Carolina and one of the attorneys of record for Charles Ronald Gray, the petitioner herein, depose and say that on the _____ day of December, 1966 I served a copy of the foregoing petition for certiorari to the Supreme Court of the United States on the Honorable T. Wade Bruton, Attorney General of the State of North Carolina, respondent herein, by depositing two copies of the same in the United States mail in the Post Office in Washington, North Carolina addressed to the Honorable T. Wade Bruton, Attorney General for the State of North Carolina, Justice Building, Raleigh, North Carolina.

_____

LEROY SCOTT

Subscribed and sworn to before me
at Washington, North Carolina,
this the _____ day of December, 1966.

_____

NOTARY PUBLIC

My commission expires: _____

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Supreme Court of the United States

Fall Term, 1966

No. 890

CHARLES RONALD GRAY,

Petitioner,

vs.

STATE OF NORTH CAROLINA,

Respondent.

Brief of the Respondent, State of North Carolina, in Opposition to Petition For Writ of Certiorari.

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Justice Building
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North Carolina, Respondent.

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Supreme Court of the United States

Fall Term, 1966

No.

CHARLES RONALD GRAY,

Petitioner,

vs.

STATE OF NORTH CAROLINA,

Respondent.

Brief of the Respondent, State of North Carolina, in Opposition to Petition For Writ of Certiorari.

OPINION BELOW

The Opinion of the Supreme Court of North Carolina is reported as STATE vs. GRAY, 268 N. C. 69, 150 S. E. 2d 1, (1966). The Opinion of the Supreme Court of North Carolina is a part of the record filed by the petitioner in this cause.

The judgment of the trial court, which is a court of general jurisdiction, is not reported in any official publication. It can be found in the State Record certified to this Court by the Petitioner. The Petitioner invoked the jurisdiction of this Court under the provisions of 28 U. S. Code, Section 1257 (3). The Respondent, State of North Carolina, denies that the Petitioner has shown sufficient basis for this Court to exercise its jurisdiction.

QUESTION PRESENTED

DOES MIRANDA vs. ARIZONA, 384, U. S. 436, 86 Sup. Ct. 1602, 16 L. Ed. 2d 694, HOLD THAT, AS A MATTER OF

LAW, IRRESPECTIVE OF A DEFENDANT'S ACTUAL ABILITY TO EMPLOY COUNSEL, NO STATEMENT MADE BY HIM TO AN OFFICER, WHILE IN THE CUSTODY OF THE OFFICER AND IN RESPONSE TO A QUESTION BY THE OFFICER, MAY BE INTRODUCED IN EVIDENCE AGAINST THE DEFENDANT UNLESS IT AFFIRMATIVELY APPEARS THAT THE OFFICER FIRST TOLD THE DEFENDANT THAT IF HE WAS AN INDIGENT PERSON, COUNSEL WOULD BE APPOINTED TO REPRESENT HIM?

STATEMENT OF THE CASE

Petitioner was tried and convicted upon an indictment charging him and his cousin, Van Gray, with felonious breaking and entering and larceny allegedly occurring on July 27, 1965. Petitioner was originally tried, along with Van Gray, at the September-October 1965 Session of Martin County Superior Court. Petitioner entered a plea of guilty after signing a waiver of counsel. Petitioner subsequently filed a Petition for a Post-Conviction review, and on January 19, 1966 a new trial was ordered as to him.

Petitioner was again tried upon the aforesaid indictment at the June 1966 Session of Martin County Superior Court. His trial began on June 15, 1966 and the jury returned its verdict of guilty as charged on June 16, 1966. He was sentenced on each count to imprisonment of not less than four (4) nor more than six (6) years, the two sentences to run concurrently. Petitioner then appealed his conviction to the Supreme Court of North Carolina, where his conviction was upheld. Petitioner was represented at his second trial and upon his appeal by two privately retained counsel.

At this second trial, Deputy Sheriff Jerry V. Beach and Police Officer Mike Roberson were permitted, over objections, to testify to certain statements made by the Petitioner while he was in custody. Petitioner contends that the admission of this evidence violated his rights under the United States Constitution as interpreted in the MIRANDA decision.

ARGUMENT

Before the testimony of either officer as to the statements by defendant was admitted, a *voir dire* examination was conducted in the absence of the jury to determine the admissability of the statements. The Court, after hearing the evidence, found:

> "The Court finds that the defendant was advised at the time of his arrest or immediately thereafter that he had a right to have and confer with counsel. That he had a right to remain silent or to make a statement and that any statement he made might be used against him. The Court being of the opinion that the defendant fully understood his rights, finds that any statement that the defendant made at the time or immediately thereafter to Deputy Sheriff Beach was freely, voluntarily and understandingly made, without any promise of reward, duress or other pressure."

On information given him by Van Gray that he and Petitioner, Charles Gray, had broken and entered the building owned by T. A. Weaver and had taken certain personal property therefrom, Deputy Beach searched for Petitioner and found him at the home of Mr. Weaver. Petitioner had gone to Mr. Weaver's home, accompanied by his cousin, Billy Gray, and "told him that he had the stuff and wanted to apologize", and asked Mr. Weaver to drop the charges. At the Weaver home, and in the presence of Mr. Weaver and Billy Gray, Deputy Beach placed Petitioner under arrest and "told him he was charged with a felony, breaking and entering". Prior to any statements made by Petitioner to Deputy Beach, he was informed by Deputy Beach that he "had a right to remain silent", that "anything he said might be used against him in a court of law", that "he could employ counsel", and that "if he wanted time to get a lawyer before we proceeded he could have that". The Petitioner replied that he did not want a lawyer and that he wanted to give the articles back to Mr. Weaver. The Petitioner then accompanied Deputy Beach, Mr. Weaver and Van Gray to the building which had

been broken and entered, and admitted his participation in the breaking and entering and larceny.

Police Officer Roberson assisted Deputy Beach in the investigation of this matter. Officer Roberson testified that on the night Petitioner was arrested, he had a conversation with Petitioner at the Police Station in which Petitioner admitted that he and Van Gray had gone in Mr. Weaver's house and had taken certain property. Van Gray was present when Petitioner made this admission. Before Officer Roberson was allowed to testify as to this conversation, a *voir dire* examination in the absence of the jury was conducted and the Court found:

> "The Court finds that at the time he made a statement to Sgt. Roberson and Deputy Sheriff Beach the defendant had been advised of his rights to have counsel, advised that any statement he made might be used against him and that he understood his rights."

It is stated in Petitioner's Brief, at page 8: "It is conceded by defendant that he was advised that he had a right to remain silent, the effect of making a statement and of his right to an attorney. These three requirements are met and they appear both in the testimony of the arresting officer and in the Court's finding of fact".

The record does not reflect that Petitioner was informed that if he were an indigent person he was entitled to have counsel appointed for him and to confer with such court appointed counsel prior to making any statement to law enforcement officers, and the trial judge made no finding that Petitioner was so advised.

However, the record does reflect that Petitioner was not an indigent at the time of his arrest and is not presently an indigent. Petitioner was never confined in jail, but was allowed bond which was posted by or for him shortly after his arrest. (STATE RECORD, p. 47). At the time of his arrest in August 1965, he was a high school graduate, and thereafter attended East Carolina College for one year.

(STATE RECORD, p. 50). He was represented at his trial by two privately retained counsel. He was represented in his appeal to the North Carolina Supreme Court by two privately retained counsel. He is represented by privately retained counsel in presenting this Petition for Certiorari to this Court.

The statements made by Petitioner in this case were not the result of an interrogation atmosphere as condemned by the MIRANDA Decision. The statements were not made while Petitioner was in jail or in the presence of police officers alone, or after prolonged questioning.

It is submitted that MIRANDA does not hold that an incriminating statement, freely and voluntarily made, may not be admitted into evidence when made by one who is not an indigent and is not unable to consult private counsel if he chooses, solely because he was not advised of a right he would have had if he had been an indigent. As stated by the North Carolina Supreme Court in the opinion below, at 268 N. C. 83:

> "It cannot violate the defendant's constitutional right against self-incrimination for the officers in their interrogation to fail to advise him of rights which some other person might have which he does not have in view of his own circumstances."

It is respectfully submitted that Petitioner's incriminating statements were properly admitted into evidence.

CONCLUSION

Based on the foregoing argument, Respondent, State of North Carolina, prays that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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